

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF REVENUE

In the Matter of the Revocation of the
Sales and Use Tax Permit of La Perla
Poblana Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

In the Matter of the Revocation of the
Retail Food Handlers License of La Perla
Poblana Inc.

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on December 21, 2010. At the request of the parties, the hearing record was held open until February 15, 2011, so as to permit discussions of the settlement of the claims in this matter. The hearing record closed on that date.

Wayne L. Sather, Attorney, Legal Services Division, appeared on behalf of the Minnesota Department of Revenue Department). Eddoro Ramirez, owner, appeared on behalf of La Perla Poblana, Inc.

STATEMENT OF ISSUE

The issues in this case is whether or not the Respondent has failed to pay sales taxes owed to the Department as required by law, thereby authorizing the revocation of the Respondent's sales tax permit.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent operates a restaurant and grocery store in Rochester, Minnesota. By law it is required to collect and remit sales tax to the State of Minnesota.
2. La Perla Poblana holds Sales and Use Tax Permit Number 8296490 issued by the Minnesota Department of Revenue.
3. La Perla Poblana holds Retail Food Handlers License Number 20086478 issued by the Minnesota Department of Agriculture.

4. Respondent has not paid all sales and use tax due to the State of Minnesota. As of the date of the evidentiary hearing, the total amount owed for sales tax, penalty, interest and other charges is \$13,387.02, with penalty and interest continuing to accrue where appropriate.¹

5. The Respondent attributes the failure to pay sales tax to a sharp drop in revenue due to a sluggish economy.

6. La Perla Poblana does not contest the amount the taxes owed.

7. A 2010 payment agreement between the Department and La Perla Poblana was terminated by the Department because La Perla Poblana did not abide by the payment terms.²

8. The parties jointly requested that the record be held open so as to facilitate negotiation of a payment plan. The negotiations did not produce an accord.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority to consider the issues set out in the Notice of and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50, 270C.02 and 270C.722.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20.

4. As a result of the failure to pay sales taxes owed to the Department, including penalties, interest and other charges, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 270C.722.

5. Under Minn. Stat. § 270C.722, subdivision 1, state agencies "must revoke [] a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes payable to the commissioner, penalties, or interest."

¹ Exhibits 1, 2 and 5; Testimony of David McClung.

² Ex. 8.

6. The Department has met the statutory requirements for notifying the Minnesota Department of Agriculture that the Respondent's Retail Food Handlers License should be revoked.

7. Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Revenue:

- (1) revoke Sales and Use Tax Permit Number 8296490 now held by La Perla Poblana, Incorporated, and,
- (2) issue a Notice of License Revocation to the Minnesota Department of Agriculture indicating that the MDA must revoke the Retail Food Handlers License Number 20086478, now held by La Perla Poblana, Incorporated.

Dated: March 10, 2011

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Revenue will make a final decision after a review of the record which may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations in this report. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and to present argument to the Commissioner. Parties should contact Myron Frans, Commissioner, Minnesota Department of Revenue, 600 North Robert Street, St. Paul, Minnesota 55146-2220, to ascertain the procedure for filing exceptions or presenting argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

Minn. Stat. § 270C.722 authorizes the Commissioner of Revenue to revoke a sales tax permit when a taxpayer has failed to pay sales taxes required by law. Because La Perla Poblana concedes that the sales tax is due and owing, the Commissioner is authorized to revoke the permit.

The Commissioner is not required to enter into a payment agreement. Under Minn. Stat. § 270.67, subd. 2, he is given discretion to do so. La Perla Poblana has had a fair opportunity to enter into such an agreement and an accord is not forthcoming.

E. L. L.